

ORDINANCE NO. _____
INTRODUCED BY: _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO,
CREATING ARTICLE 3-30 OF THE BRIGHTON MUNICIPAL CODE TO TEMPORARILY
CAP THIRD-PARTY RESTAURANT DELIVERY FEES WITHIN THE CITY

WHEREAS, the recent COVID-19 crisis and emergency orders, including state executive and public health orders, continue to affect operation of food service establishments within Brighton, thereby increasing the need for take-out meal services; and

WHEREAS, these effects include severe financial impacts on many food service establishments within Brighton; and

WHEREAS, while some restaurants may receive take-out orders directly, there are many third-party food delivery platforms and other services that operate through websites and/or mobile phone applications used by consumers to quickly and easily order pick-up and delivery meals from local restaurants; and

WHEREAS, in many instances the third-party food delivery platforms and services, without the local restaurant's knowledge or consent, will purport to sell meals from the local restaurant to consumers, and sometimes charge exorbitant fees to already struggling local restaurants; and

WHEREAS, the fees charged by a third-party food delivery platform should be capped for a period of time while on-premises dining remains restricted to avoid further harm to food establishments in Brighton; and

WHEREAS, limiting the per-order fees by capping the fees at 15% will accomplish the legitimate public purpose of easing the financial burden on struggling restaurants during this emergency while not unduly burdening third-party platforms;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, AS FOLLOWS:

Section 1. The Brighton Municipal Code is amended by the addition thereto of a new Article 3-30 which is to read as follows:

Article 3-30 Third-Party Restaurant Delivery Fees

3-30-10 - Definitions.

For purposes of this article, the term:

(a) **Online order means an order placed by a customer through a website or application provided by a third-party food delivery platform for delivery or pickup of goods from a food-service provider within the city.**

(b) Purchase price means the menu price of an online order, as determined by the retail food establishment, excluding taxes, gratuities, or any other fees that may make up the total cost to the customer of an online order.

(c) Retail food establishment means a retail operation located within the City of Brighton that stores, prepares, or packages food for sale for human consumption or serves or otherwise provides food for sale for human consumption to consumers directly, or indirectly through a delivery service, whether such food is consumed on or off the premises. Retail food establishment does not include grocery stores or convenience stores.

(d) Third-party food delivery service means any person, company, website, mobile application, or other internet service that offers or arranges for the sale of food and beverages prepared by, and the same-day delivery or same-day pickup of food and beverages from, retail food establishments.

3-30-20 - Delivery fee cap; disclosures.

(a) A third-party food delivery service shall not perform any service for a retail food establishment without the retail food establishment's consent.

(b) Limitation on delivery fees.

(1) No third-party food delivery service shall charge a retail food establishment a commission or fee for the use of the platform's services for delivery or pick-up that exceeds 15% of the purchase price per online order. This limitation does not apply to fees related to credit card processing.

(2) The provisions of this section shall not limit the ability of any retail food establishment to choose to pay a higher commission or supplemental fee to access additional advertising or other products and services offered by any third-party food delivery platform.

(c) A third-party food delivery platform shall not reduce the compensation rates paid to the delivery service driver, or withhold gratuities or tips to offset revenue reductions resulting from subsection (b) of this section.

(d) A third-party delivery food service shall not charge any additional fee to a retail food establishment that it has not voluntarily agreed to pay;

(e) At the time a final price is disclosed to a customer for the intended purchase and delivery of food from a retail food establishment through a third-party food delivery service and before that transaction is completed by the customer, the third-party food delivery service shall disclose to the customer, in plain language and in a conspicuous manner, any commission, fee, or any other monetary payment charged to the customer by the third-party food delivery service.

(f) After a transaction occurs for the purchase and delivery of food from a retail food establishment through a third-party food delivery service, the third-party food delivery service shall provide an electronic or printed receipt to the customer. The receipt shall disclose, in plain and simple language and in a conspicuous manner:

(1) The purchase price of the food;

(2) Any sales or other tax applied to the transaction;

(3) Any delivery charge or service fee, imposed on and collected from the customer by the third party food delivery service and by the covered establishment, in addition to the menu price of the food;

(4) Any tip that will be paid to the person delivering the food, and not to the third-party food delivery service, that was added into the transaction when it occurred, and

(5) Any commission associated with the transaction.

(g) All requirements, restrictions, and limits included in this section shall cease to have effect on and after April 30th of 2021, or when public health orders allow restaurants in the City of Brighton to have 100% unrestricted capacity, whichever is sooner, unless further legislative action is taken to extend the effective period of this section.

3-30-30 - Complaints and investigation.

(a) Any person may submit a complaint of a violation of this article to the Department of Finance. Such complaint must be submitted in writing and include a statement detailing alleged facts giving rise to the violation, identification of the specific prohibited conductor or action alleged to be in violation of this article, and any documents or other records supporting the allegation.

(b) Third-party food delivery service shall maintain books and records sufficient to show compliance with this article.

(c) Such books and records shall be made available to the city upon subpoena issued pursuant to section 1-26-10 of this Code.

3-30-40 - Violation; penalty.

If upon conclusion of an investigation of a complaint conducted by the Department of Finance there is a finding of a violation by a preponderance of the evidence available a civil penalty for violation of each requirement or restriction of this article shall be assessed in the amount of one-hundred dollars (\$100). Notice of such finding and assessment of civil penalty shall be sent by United States Postal Service mail with delivery confirmation to the violating third-party food delivery service. Payment of a civil penalty imposed pursuant to the article shall be due and payable within twenty-eight days of the date the notice was mailed. Subject to the appeal process of this article, failure to pay the penalty when due shall be grounds for suspension of any license issued under this Code, and payment shall be required prior to issuance of or renewal of any license required by this Code.

3-30-50 - Hearings; appeals.

- (a) Request for hearing; protest.** A third-party food delivery service may request a hearing when the City asserts a finding of a violation and assessment of a civil penalty. The hearing request shall be in writing and shall be received by the Finance Director within twenty-eight (28) days of the date of mailing a notice of finding and assessment of civil penalty. This request for hearing shall set forth the factual and/or legal basis for the third-party food delivery service's belief that the finding and assessment of the civil penalty is incorrect. Such a request made in compliance with this Subsection will postpone any payment due until a final determination has been made. A third-party food delivery service's failure to timely request a hearing shall constitute a failure to exhaust local remedies.
- (b) Informal conferences.** Upon receipt of a request for hearing, the Department of Finance may contact the third-party food delivery service's authorized representative to schedule an informal conference to discuss the procedure to be followed in the administrative hearing, to clarify the relevant issues and facts, and, if possible, to settle the matters in dispute. Participation in the informal conference does not waive any of the third-party food delivery service's or the City's rights under this Section.
- (c) Hearing time and place.** The Finance Director shall notify the third-party food delivery service in writing within sixty (60) days of receipt of the third-party food delivery service's request for a hearing of the time and place for the administrative hearing. Such notification shall be mailed no less than twenty (20) days prior to the date of hearing. In all cases, the hearing shall be held in the City at the office of the Finance Director, or at any other location as determined by the Finance Director. Such hearing may, at the discretion of the Finance Director, be held either in-person or virtually. A final decision thereon shall be issued and the results mailed to the third-party food delivery service within one hundred and twenty (120) days of the City's receipt of the third-party food delivery service's request for hearing, except that the one hundred and twenty-day period shall be extended an additional thirty (30) days if the third-party food delivery service caused any delay in the holding of the hearing or in the issuance of the decision, and except that the additional thirty (30) day period may be waived by the third-party food delivery service.
- (d) Procedures.** Hearings before the Finance Director shall be conducted in an informal manner. Formal rules of evidence shall not apply and transcripts or filing of briefs will not be required.
- (e) Exhaustion of local remedies.** The third-party food delivery service's participation in a hearing requested and held pursuant to this Section shall be considered to be an exhaustion of all local remedies.

- (f) Conduct of hearing.** The hearing shall be held before the Finance Director. However, the Finance Director may delegate their authority to a hearing officer. Such delegation is within the Director's sole discretion. The Finance Director, or hearing officer, is authorized to administer oaths and take testimony. At the hearing, the third-party food delivery service may assert any facts, make any arguments and file any briefs and affidavits the third-party food delivery service believes pertinent to their cause. The standard of proof shall be by a preponderance of the evidence.
- (g) Request for hearing; time limitation.** After the expiration of twenty-eight (28) days from the date of the notice of finding of a violation and assessment of civil penalty, if the civil penalty has not been paid or if no request for hearing has been timely filed, the notice of finding of a violation and assessment of civil penalty previously mailed shall be considered final and sustained.
- (h) Finding at hearing.** Based on the evidence presented at any hearing or filed in support of the third-party food delivery service's contentions at any hearing, the Finance Director will make a finding of whether the finding of a violation and assessment of civil penalty is sustained or not sustained.
- (i) Determination notices.** Upon rejection, in whole or part, of a claim by the third-party food delivery service that the City's finding of a violation and assessment of the civil penalty is incorrect, or upon a finding by the Finance Director that the finding of violation and assessment of civil penalty was sustained, the Finance Director shall send, within ten (10) days of said finding, a final determination notice to the third-party food delivery service setting forth the grounds for such determination. Unless an appeal is taken as provided in this Section, any assessment of civil penalty shall be paid within thirty (30) days after the date of the final determination notice.
- (j) License revocation.** A hearing on the revocation of a City business license shall be held upon reasonable notice to the third-party food delivery service by the Finance Director. The hearing shall be before the Finance Director, unless such authority has been delegated to a hearing officer. The final determination made by the Finance Director, or hearing officer, pursuant to the hearing shall be appealable as prescribed in this Section.
- (k) Authority of third-party food delivery service.** The third-party food delivery service may appeal a final determination issued by the Finance Director pursuant to this Section, provided that the third-party food delivery service files a notice of appeal within thirty (30) days of the mailing of the final determination notice.
- (l) Venue.** Venue and jurisdiction to hear and determine appeals is conferred on the Adams County District Court.
- (m) Review of proceedings.** The District Court of Adams County shall have original jurisdiction to review the proceedings, such review being conducted after the final determination by the Finance Director in accordance with Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

Section 2. The purpose of this Ordinance is to provide for the health, safety, and welfare of the people.

INTRODUCED, PASSED ON FIRST READING AND ORDERED PUBLISHED this 15th day of December, 2020.

PASSED ON SECOND READING AND ORDERED PUBLISHED BY TITLE ONLY this 5th day of January, 2021.

CITY OF BRIGHTON, COLORADO

GREGORY MILLS, Mayor

ATTEST:

NATALIE HOEL, City Clerk

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APPROVED AS TO FORM:

JACK D. BAJOREK, City Attorney